

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHENG-WEN CHENG,

Plaintiff,

-against-

DEPARTMENT OF JUSTICE; FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

23-CV-3983 (AT) (GWG)

ORDER OF SERVICE

GABRIEL W. GORENSTEIN, United States Magistrate Judge:

Plaintiff, who is currently incarcerated at the Federal Medical Center in Rochester, Minnesota, brings this *pro se* action asserting claims under the Freedom of Information Act, 5 U.S.C. § 552, and the Administrative Procedure Act, 5 U.S.C. §§ 702, 703. By order dated June 20, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

To allow Plaintiff to effect service on Defendants United States Department of Justice and Federal Bureau of Investigation through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendants. The Clerk of Court is further instructed to mark the box on USM-285 form labeled “Check for service on U.S.A.,” issue summonses, and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail an information package to Plaintiff.

The Clerk of Court is further directed to (1) issue summonses for the United States Department of Justice and Federal Bureau of Investigation; (2) complete the USM-285 forms with the addresses for these Defendants, (3) mark the box on USM-285 form labeled “Check for service on U.S.A.”; and (4) deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: June 28, 2023
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

SERVICE ADDRESSES

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